



U.S. Department of Justice

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

May 12, 2023

**BY ECF**

The Honorable Lorna G. Schofield  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

**Re: United States v. Kelvin Marte, 18 Cr. 789 (LGS)**

Dear Judge Schofield:

The Government respectfully submits this letter in response to the Court's request for an update on the above referenced violations of supervised release conditions as well as the defendant's compliance. In short, the defendant has continued to demonstrate general non-compliance with terms of his supervised release. The Government respectfully requests that the Court set a conference date at which time the Probation Department can update the Court directly. During that conference, the defendant should be advised of the pending specifications and given an opportunity to admit or deny the allegations. Depending on the defendant's decision, the Government will request that either a hearing or sentencing date be set at the Court's earliest convenience.

By way of background, on June 26, 2014, the defendant pled guilty to a narcotics offense in the District of Maryland in connection with his possession with intent to distribute between 100 and 400 grams of heroin. The defendant was subsequently sentenced to a 70-month term of imprisonment, with a 60-month term of supervised release to follow.<sup>1</sup> The defendant was released from incarceration and began the instant term of supervision on or about October 2018.

The defendant's record of non-compliance began in 2020 with instances of unauthorized travel in June and November. During this period of supervision, the defendant was also referred to outpatient substance abuse and mental health treatment. In April 2020, the Probation Department notified the Court of the defendant's continued use of illicit substances. The Court agreed with the Probation Department's recommendation to decline action at that time.

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<sup>1</sup> At the time of his arrest in the District of Maryland case, the defendant was serving a term of supervised release in connection with a narcotics conviction originating in the District of Columbia. In connection with the violation, he was sentenced to an eighteen-month term of incarceration. Violation Mem. at 2.

In August 2021, the Probation Department counseled the defendant with regards to his inability to maintain long-term sobriety or engage meaningfully in treatment. In November 2021, the defendant tested positive for fentanyl but denied use and questioned the need for on-going treatment. On January 18, 2022, the Probation Department filed a violation memorandum (the “Violation Memorandum”) outlining the defendant’s continued drug use (specifications one through five) and earlier instances of unauthorized travel (specifications six and seven). On March 11, 2022, the defendant appeared before the Honorable Sarah Netburn, United States Magistrate Judge, Southern District of New York, and admitted certain drug use specifications (specifications one through three) as set forth in the Violation Memorandum. Sentencing was scheduled for April 12, 2022. ([Dkt. 15](#)). Sentencing was adjourned until August 29, 2022 and then, at the request of the Probation Department, until October 4, 2022. ([Dkt. 19](#).)

In advance of sentencing, the Government submitted a letter recommending a five-to-eleven-month term of incarceration. ([Dkt. 20](#), the “Government Sentencing Submission”). The Government Sentencing Submission also laid out additional instances of non-compliance, including nine instances on which the defendant failed to attend treatment as well as the below violations, which occurred between the time of his admission and sentencing:

- 3/11/2022 - Positive for Cocaine, Fentanyl, and Norfentanyl
- 4/5/2022 - Failure to Report
- 4/18/2022 - Positive for Cocaine and Norfentanyl
- 4/27/2022 - Positive for Cocaine
- 5/10/2022 - Positive for Cocaine
- 5/20/2022 - Failure to Report
- 7/13/2022 - Diluted Urine Submitted
- 7/27/2022 - Failure to Report
- 9/22/2022 - Positive for Fentanyl

On October 4, 2022, the parties appeared before the Court for sentencing at which time, the Court accepted the defendant’s magistrate court plea. The Court declined to proceed with sentencing and instead granted the defendant additional time to allow the defendant to come into compliance and address his struggles with addiction. ([Dkt. 21 at 20](#)). The Court suggested returning in December 2022 to assess the defendant’s progress.

On December 6, 2022, the Probation Department submitted an amended violation memorandum (the “Amended Violation Report”), alleging additional instances of unauthorized travel, drug test failures, and false statements. On December 8, 2022, the Court directed the parties to submit a letter providing an update on the defendant’s compliance no later than January 5, 2023. ([Dkt. 24](#)). On January 5, 2023, the parties submitted a joint update advising the Court that, in addition to the allegations in the Amended Violation Report, the defendant had been discharged from treatment and had recently failed to report to the Probation Department for drug testing. ([Dkt. 25](#)). The Court directed the parties to provide an additional update no later than February 23, 2023.

On February 23, 2023, the parties submitted a joint letter ([Dkt. 27](#)) to the Court advising the Court that the Probation Department had informed the Government that it intended to notify the Court of the defendant's continued non-compliance, including the below:

- Failure to enroll in substance abuse treatment
- Unauthorized travel
- Failure to report police contact
- 2/3/23 - Positive test for fentanyl
- 2/8/23 - Failure to Report for Drug Testing
- 3/17/23 - Positive for Fentanyl
- 3/30/23 - Failure to Report for Drug Testing
- 4/19/23 - Failure to Report for Drug Testing

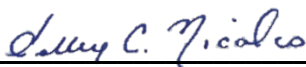
Because of the defendant's repeated instances of non-compliance, the Probation Department has declined to again amend the violation memorandum and instead seeks leave to update the Court directly in-person.

The defendant's non-compliance is persistent, brazen, and unrelenting. The Government respectfully requests that the Court set a conference date at which time the defendant should be advised of the pending specifications and given an opportunity to admit or deny the allegations. This will also allow the Probation Department to directly address the Court.

Should the defendant deny the allegations, the Government requests that a hearing date be set on the Court's first available date. Should he admit the allegations, the Government is prepared to proceed directly to sentencing.

Respectfully submitted,

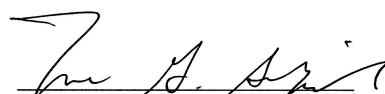
DAMIAN WILLIAMS  
United States Attorney

by:   
Ashley C. Nicolas  
Assistant United States Attorney

cc: Jennifer Brown, Esq. (counsel for Kelvin Marte)  
Officer Noah Joseph, Probation Department (by email)

Application Granted in part. By **May 26, 2023**, the parties shall submit a joint letter informing the Court of the their positions with respect to the pending specifications including whether a disposition has been reached or if an evidentiary hearing is needed. The parties shall appear for a status conference on **June 5, 2023, at 11:00 a.m.** The Clerk of the Court is directed to terminate the letter motion at docket number 32.

Dated: May 15, 2023  
New York, New York

  
LORNA G. SCHOFIELD  
UNITED STATES DISTRICT JUDGE